

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

DARYL DRUMMOND)
P. O. Box 124708, Horton Plaza)
San Diego, California 92112-4708)

CPA Certificate No. 9793)

Respondent)
_____)

No. AC-94-2

OAH No. L-63209

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy as the Decision in the above-entitled matter.

This Decision shall become effective on August 6, 1995.

IT IS SO ORDERED July 6, 1995.

BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

BY: 

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	No. AC-94-2
Against:)	
)	OAH No. L-63209
DARRYL DRUMMOND)	
2535 Kettner Blvd. #302)	<u>ACCUSATION</u>
San Diego, CA 92101)	
)	
Certificate 9793)	
)	
Respondent.)	
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PROPOSED DECISION

On March 17, 1995, in San Diego, California, Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Samuel K. Hammond, Deputy Attorney General, represented complainant.

There was no appearance by or on behalf of respondent, and the matter was heard as a default.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Carol B. Sigmann, made and filed Accusation No. AC-94-2, dated November 22, 1993, against Darryl Drummond (respondent) in her official capacity as Executive Officer of the Board of Accountancy (Board), Department of Consumer Affairs.

Respondent filed her Notice of Defense, dated December 21, 1993, requesting a hearing in this matter.

II

Notice of Hearing was mailed to respondent on March 1, 1995 and was legally sufficient pursuant to Government Code
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section 11509. There was no appearance by or on behalf of respondent.

III

Certified Public Accountant Certificate No. 9793 was issued to respondent on October 13, 1962. At all times relevant herein, said certificate was in full force and effect and expired May 1, 1992 and has not been renewed. Pursuant to Business and Professions Code section 118(b), the expiration of respondent's license, by operation of law, during any period during which it may be renewed, restored, reissued or reinstated, does not deprive the Board of its authority to discipline or revoke respondent's license.

IV

On July 17, 1992, in the United States District Court for the Southern District of California, in the case entitled United States of America v. Daryl Drummond, Criminal Case No. 91-0339-H, respondent was convicted of two counts of violating Title 26 USC 7206(1), (compelling a false tax return), a felony.

V

The facts underlying the conviction are as follow:

A. On or about August 14, 1985, respondent filed a United States Individual Income Tax Return (Form 1040) for the calendar year 1983, which contained a written declaration that it was made under penalty of perjury and was filed with the Internal Revenue Service, which return he did not believe to be true and correct as to every material matter, in that it stated on line 1a of Schedule C, entitled "Profit or (Loss) from Business or Profession," that the gross receipts or sales were \$70,020.00, when he knew and believed, the gross receipts and sales during the year 1983 were actually substantially in excess of \$70,020.00; and

B. On or about October 15, 1985, respondent filed a United States Individual Income Tax Return (Former 1040) for calendar year 1984, which contained a written declaration that it was made under the penalty of perjury and was filed with the Internal Revenue Service, which return he did not believe to be true and correct as to every material matter, in that the said return failed to disclose that he was engaged in the operation of a business activity, to wit, accounting services, from which he derived gross receipts or sales and incurred deductions, he knew and believed he was required by statute and regulation to disclose the operation of this business activity, the gross

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receipts or sales he derived therefrom, and the deductions he incurred.

VI

The crime of which respondent has been convicted, set forth in Findings IV and V, are substantially related to the qualifications, functions and duties of an accountant.

VII

As there was no appearance by or on behalf of respondent, no evidence of extenuation, mitigation or rehabilitation was offered by or on behalf of respondent.

VIII

Complainant has submitted a request that the Administrative Law Judge direct the licentiate to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case before the hearing pursuant to Business and Professions Code section 125.3, with a certification of the following alleged costs:

I. Investigation Services from the Board's

a. Investigative CPA for:

1991/92 Fiscal Year		
1.50 hours at \$43.00 per hour	\$	64.00
1992/93 Fiscal Year		
7.0 hours at \$55.84 per hour	\$	390.88
1993/94 Fiscal Year		
5.0 hours at \$58.62 per hour	\$	293.10
Investigative CPA SUBTOTAL		\$ 748.48

b. Technical Review Panel Member for:

1991/1992 Fiscal Year		
28.50 at \$12.50 per hour	\$	356.25
Technical Review Panel Member SUBTOTAL		\$ 356.25

c. Division of Investigation for:

DOI No. 91111900		
1991/1992 Fiscal Year		
6.25 hours at \$89.80 per hour	\$	561.25
1992/1993 Fiscal Year		
21.0 hours at \$87.64 per hour	\$	1,840.44
Division of Investigation SUBTOTAL		\$2,401.69

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2. Investigative services from the Attorney General's Office

a. Attorney General's cost for:

AG Case No. SD93AD0481

1993/1994 Fiscal Year

23.0 hours at \$90.00 per hour \$2,070.00

1994/1995 Fiscal Year

9.0 hours at \$95.00 per hour \$ 855.00

(thru 8/31/94)

Attorney General's SUBTOTAL \$2,925.00

TOTAL COSTS INCURRED THROUGH August 31, 1994 \$6,431.42

IX

As there was no appearance by or on behalf of respondent, he did not contest the incurrence or reasonableness of the claimed costs of investigation and enforcement and did not offer any evidence thereon.

X

The Administrative Law Judge is profoundly skeptical of the reasonableness of the claimed costs, and specifically does not make a factual finding that the claimed costs are reasonable. However, the statute appears to compel the granting of the claimed costs, absent any challenge or offer of evidence to the contrary by respondent.

DETERMINATION OF ISSUES

I

Pursuant to Business and Professions Code sections 490 and 5100(a), cause exists to discipline respondent's license in that the evidence established that he has been convicted of a crime that is substantially related to the qualifications, functions and duties of an accountant by reason of Findings IV, V and VI.

II

Complainant is entitled to recovery of the costs of investigation and enforcement of the laws in this case in the amount of \$6,431.42 by reason of Findings VIII, IX and X.

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ORDER

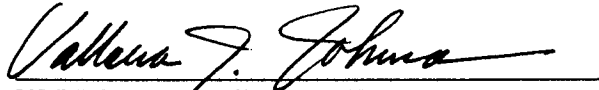
I

Certified Public Accountant Certificate No. 9793 issued to respondent Daryl Drummond is hereby revoked.

II

Respondent Daryl Drummond is ordered to pay \$6,431.42 for the costs of investigation and enforcement of this case.

Dated: March 31, 1995

A handwritten signature in cursive script, reading "Vallera J. Johnson", is written over a horizontal line.

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

DANIEL E. LUNGREN, Attorney General
of the State of California
SUSAN A. LANOUE,
Deputy Attorney General, State Bar No. 115869
Department of Justice
110 West A Street, Suite 1100
Post Office Box 85266
San Diego, California 92186-5266
Telephone: (619) 645-2077

Attorneys for Complainant

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	NO. AC-94-2
Against:)	
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DARYL DRUMMOND)	<u>ACCUSATION</u>
2535 Kettner Blvd. #302)	
San Diego, CA 92101)	
)	
Certificate No. 9793)	
)	
Respondent.)	

Complainant Carol B. Sigmann, as cause for disciplinary
action, alleges:

PARTIES

1. Complainant is the Executive Officer of the
California State Board of Accountancy ("Board") and makes and
files this accusation solely in her official capacity.

License Status

2. On or about October 13, 1962, Certified Public
Accountant Certificate No. 9793 was issued by the Board to Daryl
Drummond ("respondent"). On or about May 1, 1992 the certificate
expired and has not been renewed.

JURISDICTION

3. This accusation is made in reference to the following statutes of the California Business and Professions Code ("Code"):

a. Section 5100 provides that the Board may revoke, suspend or refuse to renew any permit or certificate issued by the Board, or may censure the holder of any such permit or certificate for unprofessional conduct.

b. Section 5107 provides, in part, that the complainant may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found guilty of unprofessional conduct involving a felony conviction in violation of Code Section 5100(a), to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees. The Board shall not recover costs incurred at the administrative hearing.

c. Section 5100(a) provides that unprofessional conduct includes, but is not limited to, conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

d. Section 5106 provides, in part, that a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of Section 5100(a).

1 e. Section 118(b) provides that "[t]he suspension,
2 expiration, or forfeiture by operation of law of a license
3 issued by a board in the department, or its suspension,
4 forfeiture, or cancellation by order of the board or by
5 order of a court of law, or its surrender without the
6 written consent of the board, shall not, during any period
7 in which it may be renewed, restored, reissued, or
8 reinstated, deprive the board of its authority to institute
9 or continue a disciplinary proceeding against the licensee
10 upon any ground provided by law or to enter an order
11 suspending or revoking the license or otherwise taking
12 disciplinary action against the licensee on any such
13 ground."

14 f. Section 5070.6 provides, in part, that an
15 expired permit to practice as a certified public accountant
16 may be renewed at any time within five years after the date
17 of expiration.

18 g. Section 490 provides, in part, that "[a] Board
19 may suspend or revoke a license on the ground that the
20 licensee has been convicted of a crime, if the crime is
21 substantially related to the qualifications, functions, or
22 duties of the business or profession for which the license
23 was issued. A conviction within the meaning of this section
24 means a plea or verdict of guilty or a conviction following
25 a plea of nolo contendere."

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CHARGES AND ALLEGATIONS

4. Respondent Daryl Drummond is subject to disciplinary action on account of the following:

a. On or about November 16, 1992, in the United States District Court for the Southern District of California, in Case No. 91-0339-G, entitled United States of America v. Daryl Drummond, respondent was convicted of two counts of violating 26 USC 7206(1), (making a false tax return), a felony.

b. The facts underlying the conviction, are as follows: On or about August 14, 1985, respondent filed a U.S. Individual Income Tax Return (Form 1040), for the calendar year 1983, signed under penalty of perjury. In that return he knowingly and wilfully stated incorrectly on line 1a of Schedule C, entitled "Profit or (Loss) from Business or Profession," that the gross receipts or sales were \$70,020, when the gross receipts and sales during the year 1983 were actually substantially in excess of \$70,020.

On or about October 15, 1985, respondent filed a U.S. Individual Income Tax Return (Form 1040), for the calendar year 1984, signed under penalty of perjury. In that return he knowingly and wilfully failed to disclose that he was engaged in the operation of a business activity (accounting services) from which he derived gross receipts or sales and incurred deductions.

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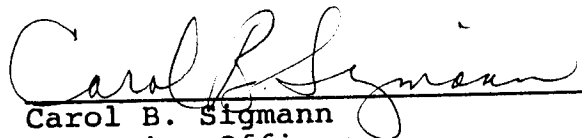
1 5. Respondent has subjected his certificate to
2 discipline pursuant to Code sections 490 and 5100(a), as more
3 particularly alleged in paragraphs 4(a) and (b) above, in that
4 respondent was convicted of crimes substantially related to the
5 qualifications, functions and duties of an accountant.

6 PRAYER

7 WHEREFORE, complainant requests that the Board hold a
8 hearing on the matters alleged herein, and that following said
9 hearing, the Board issue a decision:

- 10 1. Revoking or suspending Certificate Number 9793,
11 heretofore issued to respondent Daryl Drummond;
12 2. Directing respondent Daryl Drummond to pay to the
13 Board a reasonable sum for its investigative and
14 enforcement costs of this action; and
15 3. Taking such other and further action as the Board
16 deems appropriate to protect the public health,
17 safety and welfare.

18
19 DATED: November 22, 1993

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21 Carol B. Sigmann
22 Executive Officer
23 Board of Accountancy
24 Department of Consumer Affairs
25 State of California

26 Complainant
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